TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1923

No. [redacted]183

THE PERKINS CAMPBELL COMPANY, APPELLANT,

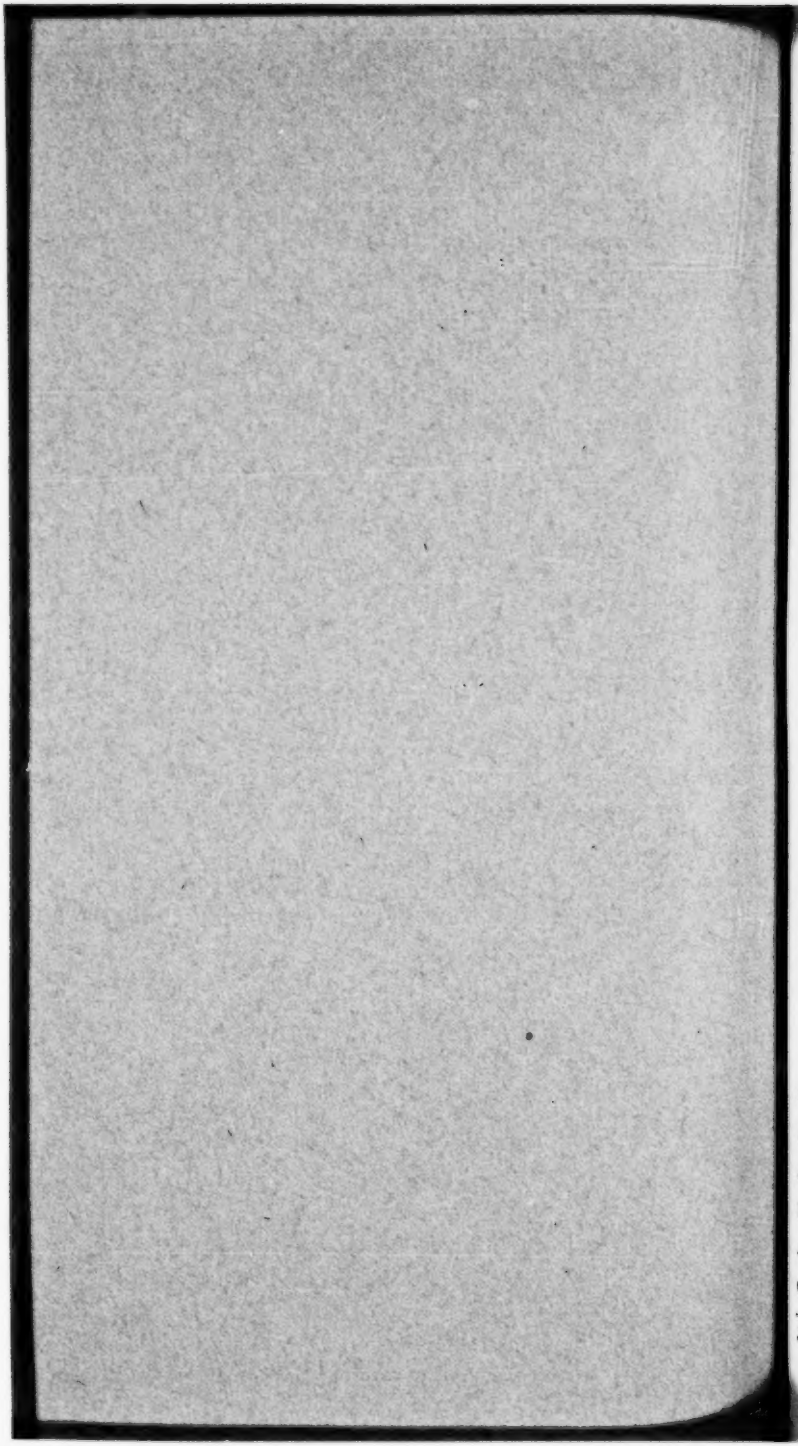
vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED DECEMBER 29, 1922.

(29,321)



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& Detweiler (Inc.), Printers, Washington, D. C., February 5, 1923.

1 **I. PETITION AND EXHIBITS A, B, C.**

[Filed March 22, 1922.]

Court of Claims of the United States.

No. B-51.

THE PERKINS CAMPBELL COMPANY

vs.

THE UNITED STATES.

[Title omitted.]

1. Claimant invokes the jurisdiction of this Court conferred by Section 2 of the Act entitled "An Act to Provide Relief in Cases of Contracts Connected with the Prosecution of the War and for Other Purposes," enacted March 2, 1919, commonly known as the Dent Act, and also Sec. 145 of the Judiciary Code.

2. The Claimant is a corporation organized under the laws of the State of Ohio, doing business at Cincinnati, Ohio. It is and was at the times hereinafter mentioned a manufacturer of leather goods, harness and saddlery. During the emergency arising
2 from the declaration of war with the German Empire and prior to November 12, 1918, it was a large contractor with the United States for harness and other leather equipment for the army.

3. On August 10, 1917, the claimant entered into an agreement with an officer acting under the authority, direction and instruction of the Secretary of War for the manufacture and delivery of 35,000 single sets harness, four-mule, ambulance or wagon. Of these 35,000 sets 17,500 were to be single sets lead harness at $26.50 per set, or $463,750 for the 17,500 sets; the remaining 17,500 sets were to be single sets wheel harness at $29.50 per set, or $516,250 for the said 17,500 sets.

4. Claimant avers that this agreement was entered into in good faith for purposes in connection with the prosecution of the war and that the claimant had performed the said agreement in part and had made expenditures and incurred obligations upon the faith thereof prior to November 12, 1918.

5. The claimant attaches hereto an itemized and verified statement showing the amount claimed to be due from the United States for amounts claimed, and yet unpaid, as reimbursement and remuneration for expenditures, obligations and liabilities necessarily incurred, including work, labor and services necessarily rendered in performing and preparing to perform said agreement, marked Exhibit A.

6. The claimant attaches hereto, marked Exhibit B, an attested copy of the best written evidence within the claimant's control of the nature, terms and conditions of the said agreement in the form of a proxy-signed contract.

3 7. The claimant avers that the Secretary of War has failed and refused to offer satisfactory adjustment, payment and compensation as provided for in Section 1 of the Dent Act.

8. On August 10, 1917, as aforesaid, the claimant entered into a certain contract with the United States, being No. 2788, Quartermaster Corps, U. S. Army. This contract was not, however, executed in the manner prescribed by law pursuant to Section 3744, Revised Statutes of the United States, as interpreted by the Comptroller of the Treasury in his decision of February 25, 1919, having been signed at the end thereof by Captain Albert Ryman in behalf of W. S. Wood, Colonel, Quartermaster Corps, U. S. A., contracting officer.

9. Immediately thereafter the claimant proceeded to purchase leather and other supplies for the performance of this contract and to perform it.

10 On August 10, 1918, the claimant had made and delivered approximately 3,000 sets of the said harness, having deferred at the request of the United States the performance of this contract for certain six-mule wagon harness and draft harness contracts for which the United States had greater need. There remained for delivery at that time 13,875 sets of the lead harness and 16,328 sets of the wheel harness. At the said time, the claimant had cut out in process of manufacture approximately 17,000 sets of the said harness, lead and wheel.

11. On or about August 22, 1918, claimant was informed by Lt. Col. George B. Goetz, Quartermaster Corps, Equipage Division, Leather Branch, that the need for ambulance wheel and lead

4 harness was less than had been anticipated at the time contract No. 2788 was executed and Lt. Col. George B. Goetz requested the claimant to make an offer for the revision of the said contract so as to reduce the number to 20,000 sets. Claimant accordingly made a proposition for such reduction on or about August 22, 1918. This proposition was not accepted by the United States. Certain negotiations, however, took place between the claimant and the said Goetz whereby a certain understanding between the said Goetz and the claimant was arrived at which understanding was embodied in the following memorandum:

"In accordance with our understanding in cancelling ambulance harness, of which we have 32,000 yet to manufacture, we will agree to allow 15,000 sets of these harness without expense to the Government with the understanding that we are to be allotted 10,000 dump cart harness, Quartermaster Corps, at $45 per set."

12. Lt. Col. George B. Goetz was not a contracting officer of the United States and had no power to bind the United States to any contract. The intention of the parties as to the said understanding was that it constituted an offer on the part of the claimant to cancel

without expense to the United States 15,000 sets of ambulance harness upon condition, however, that the United States enter into a contract with it for 10,000 dump cart harness at $45 per set; and that on the part of Captain Cochran it constituted an agreement to recommend to the officer or board having authority to reduce contracts that he or it reduce Contract No. 2788 to 20,000 sets and to the authority having power to execute contracts that he or it would execute with the claimant the contract recommended in substitution for the said reduction.

13. On October 23, 1918, the claimant received the following letter:

"War Department, Office Quartermaster General of the Army.

No. 4551. Washington, October 22, 1918.

From: Clothing & Equipage Division, Leather Subdivision, Unit G, Potomac Park.

To: Perkins Campbell Company, Cincinnati, O.

Subject: Cancellation of Contract.

"1. This to inform you that 15,000 s. s. four-mule ambulance or wagon harness as per specification *j*-124, 7,500 S. S. each lead and wheel, have been cancelled from P. O. 2788 dated August 10, 1917, which was issued to you for 35,000 s. s. of above harness.

"2. In lieu of this cancellation, award has been made you for 10,000 s. s. cart harness at $45 per set on contract L-357-J. This contract is now in process of preparation and will go forward to you for signature within several days.

"By authority of the Acting Quartermaster General. Azel F. Cochran, Captain, Quartermaster Corps, U. S. A., in Charge of Contracting Section."

14. On October 23, 1918, the Perkins Campbell Company received the following telegram:

"334, p. 23. Washington, D. C.

"Perkins Campbell Company, Cincinnati, Ohio:

"Telegram referring to 10,000 dump cart harness received. Cancellation and award of 10,000 sets approved. Contract now before Review Board but has not been approved by them. Use your own judgment in cutting harness. Will notify you when contract is approved. Wood Harness Cochran."

15. Neither the letter of the 22d of October set out above nor the telegram of October 23d constituted an acceptance of the offer of the claimant. The claimant's offer to cancel the 15,000 sets ambulance harness was conditional upon the execution by the United States of a duly executed contract for 10,000 sets of cart harness. The letter and telegram attempted to accept the offer

of cancellation without performing the obligation upon which it was conditional, to-wit: The execution of contract for cart harness. The said condition has never been performed by the United States and for this reason the offer of the claimant of September 27th has never been accepted. The right of the claimant to deliver 35,000 sets was not surrendered. The claimant at no time agreed to such cancellation except upon the performance of the condition specified.

16. The situation of the at the date of the said understanding was as follows: On September 27, 1918, the claimant had
7 made commitments and incurred expense for the fabrication of the full 35,000 sets of ambulance harness for labor, material and other necessary elements in the performance of the contract; a substantial part of said commitments and expenses were not available for the performance of the cart harness order. The reduction of said contract No. 2788 to 20,000 sets would therefore cause a substantial loss to it. If, however, it could secure a new contract for the delivery of 10,000 sets of dump-cart harness at $45 per set, its profit on the said dump-cart harness at the said price would be sufficient to wipe out the loss caused by the reduction of contract No. 2788 to 20,000 sets and would leave the claimant with a fair profit on the two transactions. It was necessary, however, in order that the claimant might recoup itself as aforesaid for its prospective loss on No. 2788 that the prospective dump-cart harness contract should be fully performed and that it should receive $45 per set for the 10,000 sets when delivered to the United States.

17. It was not the intention of the claimant by said understanding set forth in paragraph 12 above to surrender its right to deliver the full 35,000 sets of ambulance harness unless the United States should bind itself to accept and pay for 10,000 sets dump-cart harness at $45 per set.

18. It was the intention of Lt. Col. Goetz to recommend to the duly constituted authority having power to make a contract in the premises, that the United States should bind itself to accept and pay for 10,000 sets cart harness in substitution for the 15,000 sets of ambulance harness which were proposed to be cancelled. It was not the intention of the said Goetz that the Perkins Campbell Company should surrender any right under contract No.
8 2788 in consideration of his promise to recommend, or in consideration of his performance of that promise to recommend, or unless and until the United States should execute a binding contract whereby the United States would be obligated to accept and pay for at $45 per set, 10,000 dump-cart harnesses when delivered.

19. Upon receipt of the information that the cart harness contract was in process of preparation but had not been approved by the Review Board, which approval was necessary to bind the United States; in pursuance of its offer and pending acceptance thereof, the Perkins Campbell Company suspended production of ambulance harness beyond 20,000 sets, holding said performance in

abeyance until the United States should duly execute a contract for the purchase of 10,000 cart harnesses and thereby accept the claimant's offer of September 27, 1918. Nevertheless, as the United States was in need of the 10,000 cart harnesses and the delivery date for the cart harnesses under the prospective contract was January 15, 1919, the Perkins Campbell Company proceeded to the performance thereof so far as it might do so without risk of serious loss if the contract were not executed.

20. During the period of the war with the Imperial German Empire, contractors with the United States, through the Jeffersonville Depot, were urged and persuaded not to await the delivery of a duly executed contract before beginning to perform but to proceed with performance immediately on notice of award to it of an order by the duly constituted authorities of the War Department on faith that the formal contract would follow. The procedure established in the Office of the Quartermaster General of the Army for the reduction to due form and approval by the Board of Review of the action of the officers making agreements with contractors required in the usual instance not less than fourteen days and often thirty days. It had been the experience of the claimant that the duly executed contract would follow in due course the notice of allotment.

21. Nevertheless, the claimant did not intend to and did not surrender its right to deliver 35,000 ambulance harnesses, but held itself in position to make such delivery if the contract for the cart harnesses was not executed.

22. Accordingly suspending and not abandoning its right to deliver the 15,000 ambulance harnesses aforesaid pending the delivery to it of a duly executed contract for the 10,000 cart harnesses, it proceeded as aforesaid to prepare for the production of the said 10,000 cart harnesses.

23. In November 7, 1918, the Director of Purchase, by J. D. Goodpasture, Captain Quartermaster Corps, Clothing & Equipage Division, Leather Rubber Branch, requested the claimant to purchase 10,000 Eberhard special bits from the Eberhard Manufacturing Company for the performance of the prospective contract for cart harnesses.

24. On November 9, 1918, the claimant notified the Director of Purchase that it would purchase the said bits from the said Eberhard Manufacturing Company providing the delivery date on the prospective cart-harnesses contract was altered so that it would not be required to deliver 10,000 sets by January 15, 1919, but not to exceed 5,000 sets by that date and the remaining 5,000 sets on February 15, 1919, this by reason of the delay of the Board of Review of the Quartermaster General's Office to act upon the said contract for cart harness, whereby the claimant had been delayed so it was unwilling to take the risk of proceeding to incur heavy expenses prior to the delivery to it of a duly executed contract.

25. On or about November 15, 1918, the claimant received suspension requests, through the Jeffersonville Depot, from the Office

of the Quartermaster General of the Army requesting it to suspend further production under contract No. 2788, the ambulance harness contract, and under the prospective L-357-J, the cart harness contract. Accordingly it suspended further production as requested.

26. On February 25, 1919, the Comptroller of the treasury ruled that agreements entered into by officers of the War Department for the delivery of supplies to the army did not bind the United States unless executed in the manner prescribed by Section 3744 of the United States Revised Statutes. Accordingly Congress enacted, effective March 2, 1919, an act entitled "An act to provide relief in cases of contracts connected with the prosecution of the war and for other purposes," commonly known as the Dent Act. By this act, the Secretary of War was authorized to adjust, pay or discharge any agreement entered into in good faith by officers acting under the authority of the Secretary of War for the production of supplies for the prosecution of the war, upon a fair and equitable basis.

27. Neither contract No. 2788 nor L-357-J was executed in the manner required by section 3744 as construed by the Comptroller.

11 28. Pursuant to the authority conferred on the Secretary of War by the said act, the Secretary of War on March 19, 1919, promulgated General Order No. 40, whereby the War Department Claims Board, constituted by War Department Circular No. 26, dated January 20, 1919, was authorized and directed to exercise and was thereby designated and established as the agency through which should be exercised in the name of the Secretary of War and by his authority all powers and duties conferred upon the Secretary of War by the Act of Congress approved March 2, 1919, commonly known as the Dent Act, except to the extent powers under said act with regard to Canadian contracts had been conferred upon the United States Liquidation Commission, War Department.

29. On March 26, 1919, the War Department Claims Board, pursuant to the power conferred upon it by General Order No. 40, promulgated Supply Circular No. 17, which set forth procedure under claims for relief under the Dent Act.

30. Said circular provided, paragraph 2, that such claims based on agreements made by an officer acting under the authority of the Secretary of War and the nature, terms and conditions of which had been reduced to contract form or were otherwise established by written evidence should be presented in the form of Statement of Claim, Form A.

31. The claims of this claimant under contract No. 2788 and under proposed contract L-357-J were within Form A as described in said Supply Circular No. 17, and accordingly the officers of the Jeffersonville Depot advised the claimant pursuant to said circular, to prepare statements of claim, Form A, and forward them

12 through said Depot to the Claims Board, Director of Purchase, War Department. The claimant did this. Pursuant

to said circular, its claim under No. 2788 was numbered P. C. 2623 and that under L-357-J, P. C. 1357.

32. By paragraph 3, Supply Circular No. 17, the Claims Board, Director of Purchase, War Department, was directed upon the proper presentation of the claim to examine into and determine the facts as to the nature, terms and conditions of the alleged agreement referred to in the statement of claim. If the said Claims Board found that an agreement within the provisions of Section 1 of the Dent Act had been entered into, it was required to make a certificate in the form attached to Supply Circular No. 17 entitled Form C and numbered to correspond with the statement of claim. It was further required to attach thereto a copy of the agreement theretofore reduced to contract form or a notice of award theretofore signed which set forth all the terms and conditions of the agreement. If such agreement had been modified or amended after execution, it was required to so find and to attach a copy of such amendment. The Claims Board, Office of Director of Purchase, was required to sign one or more copies of the certificate, Form C, in the manner shown in such certificate.

33. By sub-section C, paragraph 3, of the Supply Circular No. 17, the Claims Board, Office of Director of Purchase, was required to submit to the claimant the nature, terms and conditions of the agreement thus established and certified.

34. On May 29, 1919, pursuant to the said Supply Circular the Claims Board, Office of Director of Purchase, did execute Cer-
13 tificate C with regard to P. C. 2623 (Contract No. 2788) and annexed a copy of said contract to the said certificate as setting forth the terms and conditions of the agreement found to exist and submitted the said certificate with the said contract annexed to the claimant, and the claimant accepted and approved the said certificate with said contract annexed as setting forth the terms and conditions of the agreement and endorsed its acceptance and approval thereon pursuant to Section C, paragraph 3, Supply Circular No. 17. The contract annexed to the said certificate with regard to the claimant's statement of claim under contract No. 2788 was a copy of said contract under which the claimant was required to manufacture and deliver 35,000 sets of ambulance harness and the United States required to accept and pay for said 35,000 sets. The said Claims Board did not find that said agreement had been amended.

35. The Claims Board, Office of Director of Purchase, the duly constituted authority, accordingly found on the said date, May 29, 1919, that the nature, terms and conditions of the obligation of the United States under the Dent Act under P. C. 2623 on the said date was as set forth in said document entitled Contract No. 2788 executed August 10, 1917. The said Claims Board, the duly constituted authority in the premises, did not find that the said contract had been reduced to oblige the claimant to deliver 20,000 sets of ambulance harness only and did not find the obligation of the United States was to accept and pay for 20,000 sets only.

36. By paragraph *d*, Section 3, Supply Circular No. 17, the Claims Board, Office of Director of Purchase, was directed to proceed
14 on the basis of the agreement established by the said Claims Board and accepted by the claimant as aforesaid to make detailed examination of the claim and to recommend a fair and equitable basis for the adjustment, payment or discharge thereof. For that purpose the Claims Board, Director of Purchase, was directed to make use of the machinery and procedure which had theretofore been established for the negotiation and settlement of agreements on properly executed contracts which had been suspended or reduced. Accordingly, the statement of claim of the Perkins Campbell Company P. C. 2623, under contract No. 2788, which was for the delivery of 35,000 sets of ambulance harness as aforesaid, determined by the duly constituted authority and accepted May 29, 1919, by the said company, was forwarded to the Zone Board at Jeffersonville, Indiana. The said claim was for commitments, labor and other expenses necessarily incurred in the performance of contract No. 2788 for 35,000 ambulance harnesses as found by the Claims Board, Office of Director of Purchase, the duly constituted authority as aforesaid.

37. The said Zone Board at Jeffersonville, however, instead of proceeding on the basis of the agreement established by said Claims Board to make detailed examination of the claim, etc., assumed the power to determine what said basis was and disregarding the decision of the Claims Board and setting aside the agreement between the claimant and said Claims Board as to said basis, assumed to decide that the said basis was not the document annexed to Certificate C (copy of contract of August 10, 1917, No. 2788) (35,000 sets), but
an agreement for the delivery of 20,000 sets only. It was
15 the view of said Zone Board that the offer of September 27, 1918, set out in paragraph 11 above and the letter of October 22, 1918, constituted a supplemental contract between the United States and the claimant whereby the claimant surrendered its right to deliver 35,000 sets of ambulance harness in consideration of the promise of Lt. Col. Goetz to recommend to the proper authority that it enter into a contract for 10,000 sets of cart harness at $45 per set. The said Zone Board then rejected the statement of claim submitted on the basis of 35,000 sets and instructed the claimant to submit to it a claim on the basis of 20,000 sets only.

38. The said determination of the Zone Board at Jeffersonville was without authority.

39. The Perkins Campbell Company, believing at the time, nevertheless, that the said Zone Board had authority to revise the basis established by the Claims Board and induced by its prior experience with said Zone Board to rely on its decision as to matters of War Department procedure, obeyed the instructions of the said Zone Board to revise claim P. C. 2623 so as to exclude thereunder that part of its expenditures and obligations incurred in the performance of contract No. 2788 in excess of 20,000 sets and submit statements showing obligations and expenditures before said Zone Board for but 20,000 sets.

40. The said Zone Board, by officers attached to it and believed by the claimant to be acting under its direction, to-wit: Captain Neidhart and Lt. W. J. Eckerle, instructed the claimant that it might accept award based on expenditures for 20,000 sets without
16 waiving its claim for expenditures incurred for the 15,000 additional sets.

41. Thereafter the Zone Board, upon the proof as to 20,000 sets only, submitted by the claimant, found the claimant entitled to certain sums and recommended payment of such sums to the Claims Board, Division of Purchase, and the War Department Claims Board.

42. An award for said amount was accordingly drawn and accepted by the claimant and paid. A copy of said award is attached marked Exhibit C. Said award is dated December 18, 1919, and covers only that part of its claim under contract No. 2788 which was included within the obligation to deliver 20,000 sets of ambulance harness. Said award did not include any part of the expenditures made and obligations incurred by the claimant in performing contract No. 2788 in excess of 20,000 sets of ambulance harness and only that part of said contract within the obligation to deliver 20,000 sets of such harness. On its face, however, said award purports to be a settlement of all obligations of the United States to the claimant arising under P. C. 2623 (Contract No. 2788) as found by the said Claims Board and agreed to by the claimant on May 29, 1919. It was not the intention of the claimant nor of the officers with whom the settlement covered by the award was negotiated to settle thereunder any claim of the claimant beyond 20,000 sets.

43. Such award and settlement, therefore, does not express the intention of the parties in that it purports to adjust, pay and discharge the agreement attached to Certificate C, dated May 29, 1919 (P. C. 2623), for the delivery of 35,000 sets, whereas it was
17 the intention of the parties that it should pay, adjust and discharge only 20,000 sets out of said 35,000. It is prayed that said award be reformed to express the intention of the parties.

44. On June 30, 1919, pursuant to and having faith in the instructions of the Zone Board, the claimant filed claim with the Board of Contract Adjustment for the payment of that part of its expenditures incurred in the performance of Contract No. 2788 which was not included in the 20,000 sets erroneously determined by the said Zone Officer to be its obligation under said contract.

45. On December 18, 1919, the claimant accepted an award in settlement of P. C. 1387 (cart harness L-357-J) with regard to the production of the 10,000 cart harnesses, which award included no allowance for any expenditures made or obligations incurred except in performance of said L-357-J. Said award included remuneration pursuant to Section C, Supply Circular 19, not exceeding 10 per cent of cost of articles in process, which remuneration the claimant offers to return if the award, Exhibit C, be reformed as prayed, and the court should consider such return proper. The award of P. C. 1387 is attached and marked Exhibit D.

46. On March 20, 1920, the Board of Contract Adjustment decided that the letter of October 22d constituted an agreement whereby the United States relieved itself of the obligation to pay for 15,000 sets of the ambulance harness and assumed in lieu thereof the obligation to accept and pay for 10,000 sets of cart harness. The Board further decided that the United States met its obligation as regards the 20,000 sets of ambulance harness by the payment of $80,-
18 385.15 on P. C. 2623 (Contract No. 2788) and as regards the 10,000 sets of cart harness by payment of $71,705.76 on P. C. 1387 (Contract No. L-357-J). The Board further decided that the United States was under no obligation to reimburse the claimant for expenditures made and materials bought for the manufacture of 15,000 sets of ambulance harness which were eliminated by the so-called agreement of October 22, 1918, and accordingly the claim was denied.

47. This decision of the said Board, claimant avers was error in that the said Board failed to observe that the duly constituted authorities of the War Department, the Office of the Claims Board, Director of Purchase, on May 29, 1919, had determined as appears by Certificate C of that date that the boundaries of the agreement under which P. C. 2623 (Contract No. 2788) was to be adjusted and paid were the obligation on the part of the contractor to deliver 35,000 sets ambulance harness and not 20,000 sets as understood by the Board of Contract Adjustment and that the claimant had accepted said finding. The said Board was also in error for the reason that the said Board of Contract Adjustment failed to correctly interpret the offer of September 27, 1918, and failed to observe that the letter of October 22d did not constitute an acceptance of said offer, and that the Perkins Campbell Company reserved its right to deliver 35,000 sets until the contract for ambulances should be delivered to it. The said Board was also in error in finding that the United States had performed its agreement under said understanding of September 27, 1918, whereas it had failed to perform the said agreement inasmuch as at no time did it enter into a contract for the delivery of 10,000 sets of cart harness at $45 per set. The effect of the
19 decision of the said Board is that the United States might accept the benefits of the offer of September 27 without accepting its burdens.

48. Thereafter in due course, the claimant took an appeal from the said decision of the Board of Contract Adjustment to the Secretary of War. On August 19, 1920, the Secretary of War gave the following decision on the claimant's appeal:

"August 19, 1920.

"In re Claim of Perkins Campbell Co. on Appeal Before the Secretary of War.

"If the order for 15,000 sets of harness was cancelled without cost to the Government in consideration of claimant's receiving a subsequent order for 10,000 sets, it is clear that upon suspension of pro-

duction under the order for 10,000 sets at the request of the Government, an equitable adjustment would require that any expenditures which claimant had made under the earlier order, for which it had not been reimbursed should be taken into account in the settlement of petitioner's claim under the second order. It is equally clear that no claim can be recognized under the original order, which was cancelled with the consent of claimant without cost to the Government. The contractor's claim under the second order having been adjusted and discharged by mutual agreement, it can not now be reopened except upon a showing of fraud or mutual mistake.

"The decision of the Board of Contract Adjustment is therefore affirmed."

49. It is the contention of the claimant that the decision of the Secretary of War was in error, first, in finding that the original order was cancelled with the consent of the claimant without cost to the Government. Claimant avers that it offered to cancel the original order to the extent of 15,000 sets without cost to the Government only upon condition that the United States enter into a binding contract with it for 10,000 sets of cart harness. This condition the United States did not perform. The finding, therefore, of the Secretary of War that the original order was cancelled with the consent of the claimant without cost to the Government is contrary to fact.

50. The claimant claims, therefore, that it is justly entitled to receive from the United States the sum of $21,868.89, being the amount to which it is entitled pursuant to the act of March 2, 1919, Supply Circular No. 17 and Supply Circular No. 19, less the remuneration referred to in paragraph 45 above, if this court should consider such return proper.

51. No action other than that recited above has been had on this claim in Congress or by any of the departments.

52. The claimant has at all times borne true allegiance to the Government of the United States, and has in no way aided or abetted its enemies.

53. It believes the facts within stated to be true. The claimant is justly entitled to the amount claimed after allowing all just allowances and offsets.

Wherefore the claimant prays that this court issue its decree finding that the award of December 19, 1919, awarding the claimant $80,373.20 in settlement of its rights under claim P. C. 2623, Contract No. 2788, under Form C Certificate, Claims Board, Office of Director of Purchase, No. P. C. 2623, dated May 29, 1918, did not in a material respect express the intention of the parties, the intention of the parties being that the said award should constitute a settlement of that part only of P. C. 2623 (Contract No. 2788) as determined on May 29, 1918, by the Claims Board, Office of Director of Purchase, to the extent of 20,000 sets of ambulance harness, whereas it purports on its face to adjust and discharge the agreement as found to exist by the Claims Board on the said date, including the full 35,000 sets of ambulance harness. Claimant further prays that this court proceed on the basis of the agreement

established by said Claims Board to receive such proof of claim as the said Zone Board should have received and to determine the amount due to the claimant and to find it is entitled to receive, in addition to the amount it has already received, the sum of $21,868.89, itemized as appears on the attached Exhibit A, but reduced by the remuneration set forth in paragraph 45, if the court should determine such reduction proper.

The claimant further prays for all other further relief to whicch it is entitled in law or equity. Perkins Campbell Company, By B. W. Campbell.

22 STATE OF OHIO, *County of Hamilton:*

B. W. Campbell, being duly sworn, says that he is the president of the claimant corporation; that he has read the foregoing petition and believes the statements therein to be true. B. W. Campbell. President Perkins Campbell Co.

Sworn to before me this 6th day of March, 1922. [Notarial Seal. Hamilton County, Ohio.] H. B. Riddell, Notary Public, Hamilton County, Ohio.

23 **EXHIBIT A.**

I. Raw material:

382 gr. Jap. bkles., ¾", #52, per gr., .90	$343.80
492 7/12 gr. Jap. bkles., ⅞", #52, pr. gr., 1.03½	509.82
61 1/24 gr. Jap. bkles., 1¼", #52, pr. gr., 1.80	109.87
136½ gr. Jap. bkles., 1½", #52, pr. gr., 2.25	307.12
80 gr. Jap. bkles., 1", #150, pr. gr., 1.67	133.60
208 19/72 gr. Jap. rings, 1¼", #4, pr. gr., 1.00	208.26
34 129/144 gr. Jap. rings, 1½", #3, pr. gr., 1.44	50.25
29 5/12 gr. Jap. rings, 1¾", #1, pr. gr., 2.44	71.78
156¼ gr. Jap. rings, 2", #1, pr. gr., 2.72	425.00
135 1/9 gr. Jap. dees, 1½", #326, pr. gr., 2.69	363.44
104 gr. Jap. layer loops, 1 x 1½", #535, pr. gr., 2.40	249.60
104 1/6 gr. I. R. snaps, 1¼", #290, pr. gr., 4.92	512.50
20 2/3 gr. I. R. snaps, 1½", #290, pr. gr., 5.47	113.05
624½ dz. Jap. bkles., 1½", #53, pr. dz., .48	299.76

1,250 dz. pr. eberized bits, #47, dz. pr., .85		1,062.50	
24			
68½ lbs. shoe tacks, per lb., .19		13.02	
147 lbs. asst. lace tacks, per lb., .16		23.52	
		$4,796.89	
Less 2% cash discount		95.94	
		$4,700.95	
1,000 lbs. #8 copper rivets and burrs, @ .42 pr. lb	$420.00		
950 lbs. #6-7 hame rivets, @ .097 pr. lb	92.15		
213 lbs. #7 burrs, @ .156 pr. lb	33.23		
	$545.38		
Less 1% cash discount	5.45		
		539.93	
		$5,240.88	
Gov. allowance of 50% and contractor retain material			$2,620.44
114 1/6 dz. pr. amb. hames, $9.75 per dz. pr.		$1,113.12	
A fair value on above to contractor on basis of 25% and contractor retain material		278.28	
Allowance to contractor on above			834.84
220 1/12 dz. pr. amb. trace chains, @ 5.50 per dz. pr.		$4,559.96	
402 dz. pr. amb. trace chains, @ 5.00 per dz. pr.		2,010.00	
		$6,569.96	
Less 2% cash discount		131.40	
		$6,438.56	
25			
A fair value on above to contractor on basis of 25% and contractor retain material		1,609.64	
Allowance to contractor on above			4,828.92
96 lbs. 6 cd. linen thread, @ 2.28 per lb		$196.08	
Less 6% cash discount		11.76	
		$184.32	
Allowance by Government of 33-1/3% on above and contractor retain material			61.44

207 7/36 gr. 1¾" U. S. rosettes, pr. gr., $4.20	$870.22	
Less 2% cash discount	17.40	
	$852.82	
A fair value on above to contractor on basis of 25% and contractor retain material	213.20	
		639.62
		$8,985.26
64,270 1¼" U. S. spots, per M, $30.00	$1,928.10	
Less 2% cash discount	38.56	
Above material to be taken by Government at an allowance of		1,889.54
12,606 lbs. Lang har. leather backs, R, @ .80 per lb.	$10,084.80	
4,633 lbs. Lang har. leather backs, #2, @ .78 per lb.	3,613.74	
1,084 lbs. Lang har. leather backs, #3, @ .76 per lb.	823.84	
26		
1,604 lbs. Bretney har. leather sides, @ .70 per lb.	1,122.80	
20,212 lbs. S. I. Reed har. leather sides, B, @ .70 per lb.	14,148.40	
11,990 lbs. S. I. Reed har. leather sides, BB, @ .68 per lb.	8,153.20	
12,135 lbs. Wilson har. leather sides, #1, @ .70 per lb.	8,494.50	
7,106 lbs. Wilson har. leather sides, #1, @ .69 per lb.	4,903.14	
	$51,344.42	
Less 2% discount on Bretney leather	22.45	
	$51,321.97	
Allowance of 15% by Government and contractor retain material		7,698.30

II. Partly finished products: None.

III. Finished products on hand: None.

IV. Special facilities: None.

V. Commitments:

With the Eagle Leather Co., San Francisco, Calif.:		
30 rolls #1 har. leather, 390 sides, average 22 lbs. per side, or 8,580 lbs., @ .69 per lb.	$5,920.20	
40 rolls #2 har. leather, 400 sides, average 22 lbs. per side, or 8,800 lbs., @ .68 per lb.	5,984.00	
	$11,904.20	
Allowance on 15% to contractor and sub-contractor retain material....		1,785.63
With Newton Kelsay & Sons, Evansville, Ind.:		
902 1/3 dz. button loops, 2,707 lbs., @ .13 per lb.	$351.91	
902 1/3 dz. rivets, 1,917 lbs., @ .15 per lb.	287.55	
902 1/3 dz. line rings, 2,537 lbs., @ .10 per lb.	253.70	
902 1/3 dz. staples, 3,766 lbs., @ .15 per lb.	564.90	
902 1/3 dz. plates, 1,579 lbs., @ .04 per lb.	63.16	
25 dz. clips, finished, 2,317 lbs., @ .06½ per lb.	150.60	
77 1/3 dz. clips, raw material, 4,907 lbs., @ 3.65 per C	179.10	
902 1/3 dz. rings, fin., 3,723 lbs., a .10 per lb.	372.30	
902 1/3 dz. links, raw mat., 2,424 lbs., @ 3.568 per C	86.41	
25 dz. strap iron, punched, 7,962 lbs., @ .06½ per lb.	517.53	
77 1/3 dz. strap iron, raw, 21,358 lbs., @ .04 per lb.	854.32	
	$3,681.38	
Allowance for cash received from U. S. came through sale by Lt. Col. Geo. B. Goetz, as per letter 1/7/1920	2,171.22	
Balance due on Newton Kelsay committed to be allowed by Government		1,510.16
Total amount of claim due contractor		$21,868.89

28 **EXHIBIT B.**

Q. M. C. Form No. 108.

Revised Form Approved Nov. 30, 1914.

Rec'd Aug. 19, 1917, D. Q. M. O., Jeff.

Contract for Supplies to be Delivered in Bulk at Depots and to Purchasing Quartermasters for Distribution or Use in Manufactures, etc.

To be Used for All Purchases of Supplies, Clothing, Wagons, Harness, Bacon, etc., Which are Purchased in Bulk or Large Quantities to be Delivered at Depots or to Purchasing Quartermasters.

Between W. S. Wood, colonel, Q. M. Corps, Jeffersonville, Indiana, and The Perkins-Campbell Co., Cincinnati, Ohio, for 35,000 single sets harness, at Jeffersonville, Indiana.

Date contract, August 10, 1917. Contract expires April 15, 1918.

Sureties, United States Fidelity & Guaranty Co., Baltimore, Md., $100,400.00.

Appropriation and amount, S. S. & T., F. Y., 1918, $1,003,800.00.

These articles of agreement, entered into this tenth day of August, nineteen hundred and seventeen, between W. S. Wood, colonel, Quartermaster Corps, United States Army, of the first part, for and in behalf of the United States of America, and The Perkins-Campbell Co., by H. E. De Camp, treas. (a corporation existing under the laws of the State of Ohio), of Cincinnati, in the County of Hamilton and State of Ohio (hereinafter designated as contractor), of the second part: Witness, that the said parties do hereby mutually
29 covenant and agree to and with each other (referring to specifications hereto attached or referred to herein, or pertaining hereto, and to samples referred to herein or in said specifications, which, so far as they are applicable, form a part of this contract) as follows:

1. That the said contractor shall furnish and deliver the following-named supplies in the manner, at the rates or prices, at the place or places named herein, at the time or times stated, and for such supplies so delivered and accepted, the said contractor shall receive the prices as specified below; and that the supplies so delivered shall be like and equal in all respects to the standard samples (change accordingly if other samples are to govern) on file in the office of the Depot Quartermaster at Jeffersonville, Indiana, and each piece or article or package thereof, as the case may be, shall be marked with the contractor's name, date of the contract, and depot of delivery, as directed by the receiving officer, if practicable, viz: f. o. b. Cincinnati, Ohio. Delivery to begin on or before October 1, 1917, and to be completed on or before April 15, 1918. Harness to be packed in commercial packages or boxes.

Thirty-five thousand (35,000) single sets harness, 4-mule ambulance or wagon, black leather, as per specifications J-124, except to be without collars.

Seventeen thousand five hundred (17,500) single sets lead. For all: Four hundred sixty-three thousand seven hundred fifty dollars ($463,750.00) (per set, $26.50).

Seventeen thousand five hundred (17,500) single sets wheel. For all: Five hundred sixteen thousand two hundred fifty dollars ($516,250.00) (per set, $29.50).

* * * * * * *

NOTE.—It is agreed and understood between the contracting parties that eight hours shall constitute a day's work, and any overtime shall be paid for at the rate of time and a half, in consideration of which the following additional sums shall be paid the contractor:

Lead harness, 64¢ per set:
Wheel harness, 72¢ per set.

Compliance with State Labor Laws.—All work done in the performance of this agreement shall be done in full compliance with all of the laws relating to conditions of labor, places of labor, hours and compensation of labor, in effect in the State where said work, or any part thereof, shall be performed. Failure of the contractor to comply with such laws shall entitle the Government, at its option, to cancel this agreement. In such case, only articles delivered and accepted by the Government up to the date of such cancellation shall be paid for.

Labor Disputes.—In the event that labor disputes shall arise directly affecting the performance of this contract and causing or likely to cause delay in making deliveries upon the date or dates specified, the contractor shall address a written statement thereof to the contracting quartermaster, or his successor, for transmission to the Secretary of War, with the request that each dispute be settled, providing such information and access to information within the control of the contractor as the Secretary of War shall require, and it is stipulated and agreed that the Secretary of War may thereupon settle or cause to be settled such dispute.

The contractor will enter into collective bargaining arrangement with his employees.

Alternative.—Employees shall not be refused the right by the contractor of appointing a representative from their number to present to the contractor any matters that they may wish to bring to his attention. The refusal of the contractor to afford such representative or representatives an opportunity of conferring with him shall entitle the Government, at its option, to cancel this agreement.

2. That the United States shall have the right at any time to inspect, in the manner deemed necessary, by duly authorized officer or agent, the articles in process of manufacture and to

reject any materials or workmanship not conforming to requirements; the action of such inspector to be in an advisory capacity only, the final inspection to be made at the place where delivery is required.

3. That the articles herein contracted for shall be examined and inspected, without unnecessary delay after being delivered, by a person or persons appointed by the United States; and upon such inspection, the articles found to be in all respects as required by this contract shall be received and become the property of the United States. Any and all articles that may, upon such inspection, be condemned or rejected, shall be removed from the premises by the contractor within 10 days after the said contractor or his agent shall have been notified of such rejection; otherwise, at the risk and expense of the contrator.

5. That for and in consideration of the faithful performance of the stipulations of this contract, the contractor shall be paid, at the office of the contracting officer, or by a disbursing officer designated by him to make payments, the prices stipulated in this contract for those supplies delivered and accepted; and, except as otherwise provided, payments will be made as soon after the acceptance of each delivery as is practicable and funds on hand for the purpose will admit.

6. That in the performance of this contract the said contractor shall not, directly or indirectly, employ any person under going sentence of imprisonment at hard labor which may have been imposed by a court of any State, Territory, or municipality, having criminal jurisdiction, nor permit such employment by any person furnishing labor or materials to said contractor for use in fulfillment of this contract.

32 7. That it is expressly agreed and understood that this contract shall be noneffective until an appropriation adequate to its fulfillment is granted by Congress and is available, except in so far as is necessary to provide for the necessities of the service as authorized by section 3732 of the Revised Statutes of the United States. In order, however, to provide for the necessities of the service as authorized by section 3732 of the Revised Statutes of the United States, it is agreed that the supplies specified herein, so far as authorized by said section, shall be delivered at the times and in the manner required under this contract, and that payments for the supplies so delivered and accepted shall be made as soon as it is practicable after funds are available under appropriations therefor by Congress.

8. That in case of the failure of the contractor to perform any part of this contract the party of the first part, or his successor, shall have the right to supply the deficiency by procurement in open market, or otherwise, purchasing any of the supplies so required at such place as he may elect, with a view of obtaining the same promptly and at the same time endeavoring to secure fair and reasonable prices (the articles procured to be the kind herein specified, as near as practicable), at the expense of the contractor; and in case failure should occur prior to the time fixed for performance of

all parts of the contract the right is hereby reserved to the United States to elect whether the contractor shall be permitted to continue performance as to such remaining part (deficiency by reason of any further failure to be supplied as above) or whether the entire unperformed part shall be procured at the expense of the contractor. In event, however, of the granting of additional time for performance, the cost of inspection and other expenses and damages to the United States over what would have been incurred had performance been accomplished by the time originally fixed therefor, if any, except in so far as the same may arise from delays for which the United
33 States is responsible, as determined in each of these particulars by the officer in charge or higher authority, shall be charged to the contractor and may be deducted from any money due or to become due said contractor from the United States: Provided, That where additional time has been granted the United States shall also have the right to cause the remaining part of the contract, or any portion thereof, to be taken from the contractor whenever, in the opinion of the officer in charge, reasonable and satisfactory progress is not being made, and to secure completion at the expense of the contractor, including charges as above on account of delays.

9. That the contractor shall hold and save the United States, and all officers and agents thereof, harmless from and against all demands of any nature or kind for or on account of the use of any patented article, combination, or process which may affect the material delivered or work done under this contract.

10. That neither this contract nor any interest therein shall be transferred to any other party or parties, and in case of such transfer the United States may refuse to carry out this contract either with the transferor or the transferee, but all rights of action for any breach of this contract by said contractor are reserved to the United States.

11. That the following changes or alterations were made in this contract before it was signed by the contracting parties, viz:

Articles four (4) and thirteen (13) and irrelevant words in caption stricken out. One extra sheet added.

* * * * * * *

12. That no Member of or Delegate to Congress, or Resident Commissioner, nor any person belonging to or employed in
34 the military service of the United States, is, or shall be, admitted to any share or part of this contract, or to any benefit which may arise herefrom, but, under the provisions of section 116 of the Act of Congress approved March 4, 1909 (35 Stats. L., 1088), this stipulation, so far as it relates to Members of or Delegates to Congress, or Resident Commissioners, shall not extend, or be construed to extend, to any contract made with an incorporated company for its general benefit.

In witness whereof, the parties aforesaid have hereunto placed their hands the date first hereinbefore written, and the contracting

officer hereby certifies that if the contractor is a corporation that said officer has satisfied himself of the authority of the person signing the contractor's name to bind the contractor and has waived the requirements of Army Regulations as to the filing of written evidence of said authority.

Witness: Bessie M. Hensel, as to W. S. Wood, Colonel, Quartermaster Corps, U. S. A., by Albert I. Ryman, Captain, Q. M., U. S. R. Grant E. Dorrell, as to The Perkins-Campbell Co., by H. E. De Camp, Treas.

(Executed in triplicate.)

35 **EXHIBIT C.**

Award.

Form 1 (Revised).

Zone Six, Jeffersonville, Indiana.

Claim No. P. C. 2623. Contract No. 2788.

This form to be used when a single award is to be made.

Award of Secretary of War under the Act of Congress Entitled "An Act to Provide Relief in Cases of Contracts Connected with the Prosecution of the War and for Other Purposes," Approved March 2, 1919.

It appearing to the satisfaction of the Secretary of War that an agreement was entered into in good faith between The Perkins-Campbell Co., the claimant, and W. S. Wood, Col., Q. M. C., an
(Give name, rank or title and corps.)
officer or agent acting under the authority, direction or instruction of the Secretary of War, on or about the 10th day of August, 1917, during the emergency arising from the declaration of war with the German Empire and prior to November 12, 1918, for a purpose connected with the prosecution of the war; that the agreement had been performed in whole or in part, or expenditures had been made or obligations incurred by the claimant on the faith of such agreement, prior to November 12, 1918; that the agreement has not been executed in the manner prescribed by law; that the said agreement is within the provision of the above-entitled act of Congress; that the nature, terms and conditions of said agreement are set out in "Form C," certificate of Claims Board, office Director of
36 Purchase, No. P. C. 2623, dated May 29, 1919, on file in the War Department; that the claimant presented his claim to the Secretary of War before June 30, 1919;

(Strike out Block 1 if there have been previous deliveries and Block 2 if there have been none.)

*Block 1.

that the sum of $— will adjust,

Block 2.

that there have heretofore been delivered by the claimant and accepted by the United States under the said agreement fourteen thousand one hundred forty two (14,142) single sets ambulance harness (6,682 sets lead and 7,260 sets wheel) of the fair aggregate value of $416,781.18; that the said sum of $416,781.18 paid or to be paid for said articles or work heretofore delivered and accepted, together with the additional sum of $80,385.15, will adjust,

pay, and discharge such agreement upon a fair and equitable basis, and that such sum will not include prospective or possible profits on any part of the agreement beyond the goods and supplies delivered to and accepted by the United States thereunder and a reasonable remuneration for expenditures and obligations or liabilities necessarily incurred in performing or preparing to perform said agreement:

The Secretary of War hereby awards to said claimant the *the* sum of $80,385.15,

(Strike out Block 3 if there have been no previous deliveries.)

Block 3.

which sum, in conjunction with the payments herein above mentioned, made or to be made for the articles, work or services heretofore delivered and accepted shall be

37 in full adjustment, payment, and discharge of said agreement.

(Strike out blocks not applicable.)

Block 4. The payment by the United States of this award shall operate to vest in the United States title to the property described in "Schedule A" attached hereto.

*Block 5. From the said sum of $— shall be deducted the principal sum of $—, due from the claimant by reason of advances heretofore made by the United States, plus interest due on said principal sum up to the date that this award is approved by the War Department Claims Board, and the claimant is hereby released from all obligations to pay interest on said principal sum after that date.

*Block 6. From the said amount of $— shall be deducted the amount of $—, and in lieu thereof the Secretary of War hereby awards to the claimant the property listed on "Schedule B" hereto attached, and this award shall operate to vest in the claimant title to such property.

*Stricken out in copy.

(Strike out block not applicable.)

*Block 7.

No part of this award is made with respect to any portion of the agreement which was sub-let.

Block 8.

The extent to which this award is made with respect to any portion of the agreement which was sub-let is set forth in "Schedule C" hereto attached.

38 Approved, Washington, D. C., 12/19, 1919.

CLAIMS BOARD, OFFICE DIRECTOR OF PURCHASE,
By L. W. HOLDER,
Member.

J. C. B. J. O. T.

Made and approved by authority of the Secretary of War:

WAR DEPARTMENT CLAIMS BOARD.
By J. L. SCHLEY,
Member.

Dated Washington, D. C., 12/20/19.

Attested to be a true copy.

C. P. HOLLINGSWORTH,
Lt. Col., Q. M. Corps.

Accepted Dec. 18, 1919.

THE PERKINS, CAMPBELL CO.,
Claimant.

By C. O. GELLHAUS,
Secy.

SCHEDULE "A."

Property Acquired by the United States as a Part of the Settlement

1. No. of claim: P. C. 2623.
2. Claimant: Perkins, Campbell Co.
3. Articles or works:

Raw Materials:

19,730 br. spots, 1¼".
10⅛ Gro. U. S. Rosettes.

*Stricken out in copy.

39 Partly Finished Products:

Component parts more than 80% completed:

2,155 lead bridles, complete.
2,593 lead turnback and crupper.
2,542 lead hipstraps.
2,593 lead martingales.
628 wheel bridles.
351 wheel crowns.
514 throats.
1,415 fronts and rosettes.
372 right check pieces.
2,322 bit straps.
123 bridle reins, complete.
66 short reins.
470 rein straps.
1,817 upper hame straps.
4,834 lower hame straps.
1,228 breast straps.
2,241 choke straps.
4,237 ambulance hames and traces.
3,063 belly bands.
1,210 breeching bodies.
2,751 lazy straps.
2,010 wheel turnback and hip.
3,510 trace billets.
2,420 side straps.
1,022 winker braces.
16 face pieces.

Component parts less than 80% completed:

2,848 trace billets, no safes.

4. Time of delivery: To be fixed by the United States.
5. Place of delivery: f. o. b. Cincinnati, Ohio.
6. Shipping instructions: To be furnished by the zone supply officers, Jeffersonville, Indiana.
7. Inspection: Such as the United States may require.

SCHEDULE "C."

Extent to Which Award Is Made with Respect to Any Portion of Contract Sublet.

1. No. of claim: P. C. 2623.
2. Claimant: Perkins-Campbell Co.
3. The claimant has presented satisfactory evidence that the following-named subcontractors have been paid by claimant:

Subcontractor.	Place of business.	P. O. address.	Amount awarded.
.....	None.	.....	.....

4. The claimant has presented satisfactory evidence that the following-named subcontractors have consented to look for their compensation to the claimant only.

Subcontractor.	Place of business.	P. O. address.	Amount awarded.
Lang Tanning Co.....	Kitchener, Ontario, Canada.....	.....	$9,326.14

5. Payment shall be made directly to the following-named subcontractors.

Item.	Subcontractor.	Place of business.	P. O. address.	Amount awarded.
.....	None.	.....	.....	.....

41 (Contractor's Affidavit, to be Executed in Quadruple.)

STATE OF OHIO, *County of Hamilton, ss:*

C. O. Gellhaus, being duly sworn, upon oath says that he is Secretary of The Perkins-Campbell Co. and has authority to make this affidavit for and on behalf of said company, with reference to the Government contract dated the 10th day of August, 1917, and numbered P. 2788, with said company as "contractor"; that said contractor, for the purpose of carrying out said contract, has procured and has on hand or has made commitments for the raw materials, partly finished articles, special facilities and other items hereinafter enumerated, and for the same has laid out and expended or has actually become obligated for, as hereinafter indicated, the sum or sums set opposite each item respectively; that said raw materials, partly finished articles, special facilities, commitments and other items are not in any instance nor in their entirety more than would have been necessary to complete the unfinished portion of said contract; that the credit items hereinafter enumerated, if any, which said contractor is willing to allow to the United States in event said contractor shall be permitted to retain the articles and items designated in said credit items, represent the present fair value of said articles and items respectively; that said contractor's claim against the United States as hereinafter set out does not in any item nor in its entirety exceed the actual loss to said contractor by reason of the termination of said contract, and that said claim is just and equitable and should be paid by the United States.

——.

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EXHIBIT D.

Award.

Form 1 (Revised).

Zone Six, Jeffersonville, Indiana.

Claim No. P. C. 1387. Contract L-357-J.

This form to be used when a single award is to be made.

Award of Secretary of War under the Act of Congress Entitled "An Act to Provide Relief in Cases of Contracts Connected with the Prosecution of the War and for Other Purposes," Approved March 2, 1919.

It appearing to the satisfaction of the Secretary of War that an agreement was entered into in good faith between The Perkins, Campbell Co., the claimant, and Azel F. Cochran, Capt. Q. M. C., an
(Give name, rank or title and corps.)
officer or agent acting under the authority, direction or instruction of the Secretary of War, on or about the 22nd day of October, 1918, during the emergency arising from the declaration of war with the German Empire and prior to November 12, 1918, for a purpose connected with the prosecution of the war; that the agreement had been performed in whole or in part, or expenditures had been made or obligations incurred by the claimant on the faith of such agreement, prior to November 12, 1918; that the agreement has not been executed in the manner prescribed by law; that the said agreement is within the provision of the above-entitled Act of Congress; that the nature, terms and conditions of said agreement are set out in "Form C," certificate of Claims Board, office Director of Purchase,
43 No. P. C. 1387, dated June 5th, 1919, on file in the War Department; that the claimant presented his claim to the Secretary of War before June 30, 1919;

(Strike out Block 1 if there have been previous deliveries and Block 2 if there have been none.)	Block 1.	*Block 2.
	that the sum of $71,705.76 will adjust,	that there have heretofore been delivered by the claimant and accepted by the United States under the said agreement —— of the fair aggregate value of $—; that the said sum of $— paid or to be paid for said articles or work heretofore delivered and accepted, together with the additional sum of $— will adjust,

pay, and discharge such agreement upon a fair and equitable basis, and that such sum will not include prospective or possible profits on

*Block 2 stricken out in copy.

any part of the agreement beyond the goods and supplies delivered to and accepted by the United States thereunder and a reasonable remuneration for expenditures and obligations or liabilities necessarily incurred in performing or preparing to perform said agreement:

The Secretary of War hereby awards to said claimant the sum of $71,705.76,

(Strike out Block 3 if there have been no previous deliveries.)

*Block 3.

which sum, in conjunction with the payments herein above mentioned, made or to be made for the articles, work or services heretofore delivered and accepted shall be

44 in full adjustment, payment, and discharge of said agreement.

(Strike out blocks not applicable.)

Block 4. The payment by the United States of this award shall operate to vest in the United States title to the property described in "Schedule A" attached hereto.

*Block 5. From the said sum of $— shall be deducted the principal sum of $—, due from the claimant by reason of advances heretofore made by the United States, plus interest due on said principal sum up to the date that this award is approved by the War Department Claims Board, and the claimant is hereby released from all obligations to pay interest on said principal sum after that date.

*Block 6. From the said amount of $— shall be deducted the amount of $—, and in lieu thereof the Secretary of War hereby awards to the claimant the property listed on "Schedule B" hereto attached, and this award shall operate to vest in the claimant title to such property.

(Strike out block not applicable.)

*Block 7. No part of this award is made with respect to any portion of the agreement which was sub-let.

Block 8. The extent to which this award is made with respect to any portion of the agreement which was sub-let is set forth in "Schedule C" hereto attached.

*Blocks 5, 6, and 7 stricken out in copy.

45 Approved, Washington, D. C., 12/19, 1919.

CLAIMS BOARD, OFFICE DIRECTOR OF PURCHASE,
By L. W. HOLDER,
Member.

J. O. T.

*Stricken out in copy.

Made and approved by authority of the Secretary of War:

WAR DEPARTMENT CLAIMS BOARD,
By J. L. SCHLEY,
Member.

Dated Washington, D. C., 12/20/19.

Attested to be a true copy:

C. P. HOLLINGSWORTH,
Lieut. Co., Q. M. Corps.

Accepted: Dec. 18, 1919.

THE PERKINS, CAMPBELL CO.,
Claimant,
By C. O. GELLHAUS.

SCHEDULE "A."

Property Acquired by the United States as a Part of the Settlement.

1. No. of claim: P. C.-1387.
2. Claimant: Perkins, Campbell Co.
3. Articles or work:
135 doz. prs. cart hames.
833⅓ doz. prs. cart breeching pins.
83⅓ gro. cart saddle nails.
1,000 doz. prs. cart breeching chains.
2,500 cart saddle trees.
46 1,990 prs. ⅜" 5-link cart breeching chains.
3,667 Goetz patent cart saddle trees (finished).
27½ doz. prs. hames for cart harness.
84 gro. #508 1¼" gun metal saddle nails.
4. Time of delivery: To be furnished by the United States.
5. Place of Delivery: f. o. b. Cincinnati, Ohio.
6. Shipping Instructions: To be furnished by the Zone Supply Officer, Jeffersonville, Ind.
7. Inspection: Such as the United States may require.

SCHEDULE "C."

Extent to Which Award is Made with Respect to Any Portion of Contract Sublet.

1. No. of claim: P. C. 1387.
2. Claimant: The Perkins, Campbell Co.
3. The claimant has presented satisfactory evidence that the following-named subcontractors have been paid by claimant.

Subcontractor.	Place of business.	P. O. address.	Amount awarded.
U. S. Hame Co.....	Buffalo, N. Y.....	.....	$6,620.00
Enterprise Mfg. Co.....	Akron, Ohio.....	.....	336.00
Eberhard Mfg. Co.....	Cleveland, Ohio.....	.....	1,494.52
National Chain Co.....	Marietta, Ohio.....	.....	245.48

4. The claimant has presented satisfactory evidence that the following-named subcontractors have consented to look for their compensation to the claimant only.

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Subcontractor.	Place of business.	P. O. address.	Amount awarded.
U. S. Hame Co.....	Buffalo, N. Y.....	.....	$12,842.45
Enterprise Mfg. Co.....	Akron, Ohio.....	.....	1,911.00
Eberhard Mfg. Co.....	Cleveland, Ohio.....	.....	1,494.52
National Chain Co.....	Marietta, Ohio.....	.....	497.50
Lang Tanning Co.....	Kitchener, Ontario, Canada	.....	37,643.71

5. Payment shall be made directly to the following-named subcontractors.

Item.	Subcontractor.	Place of business.	P. O. address.	Amount awarded.
1 die block with special irons.....	Appleton Wood Products Co..	Appleton, Wis..	.....	$6.10

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II. DEFENDANT'S DEMURRER.

[Filed May 20, 1922.]

Demurrer to Petition.

The United States by the Attorney General demurs to the petition filed herein on March 22, 1922, on the grounds—

1. That it does not state facts sufficient to constitute a cause of action against the United States.
2. That it does not state facts sufficient to entitle plaintiff to any of the relief prayed for.
3. That this Court is without jurisdiction over the subject matter of said petition. Robert H. Lovett, Assistant Attorney General. Crowley Wentworth, Attorney for the United States.

Filed May 20, 1922.

III. ARGUMENT AND SUBMISSION OF DEMURRER.

On June 12, 1922, the demurrer was argued by Mr. Crowley Wentworth, for the defendant, and by Mr. Henry T. Hunt, for the plaintiff, and thereupon ordered that case be continued to October call of calendar.

On July 20, 1922, the plaintiff filed a brief on demurrer.

On October 16, 1922, the demurrer was submitted by Mr. Crowley Wentworth, for the defendant, and by Mr. Henry T. Hunt, for the plaintiff.

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IV. JUDGMENT OF THE COURT.

[Filed Oct. 30, 1922.]

At a Court of Claims held in the City of Washington on the Thirtieth day of October, A. D., 1922, judgment was ordered to be entered — follows:

This case was submitted upon the defendant's demurrer to the plaintiff's petition; on consideration whereof the Court is of the opinion that the demurrer is well taken. It is therefore adjudged and ordered by the court that the defendant's said demurrer to the plaintiff's petition be sustained, and that the petition be and the same is hereby dismissed. By the Court.

V. PLAINTIFF'S APPLICATION FOR AND ALLOWANCE OF APPEAL.

[Filed Nov. 22, 1922.]

From the judgment rendered in the above-entitled cause on the 30th day of October, A. D., 1922, in favor of the defendant, the plaintiff, by its attorney, on the 22nd day of November, A. D., 1922, makes application for, and gives notice of, an appeal to the Supreme Court of the United States. Henry T. Hunt, Attorney of record.

Filed December 4, 1922.

Ordered: That the above appeal be allowed as prayed for. Dec. 11, 1922. By the Court.

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Court of Claims.

No. B-51.

THE PERKINS CAMPBELL COMPANY

vs.

THE UNITED STATES.

I, F. C. Kleinschmidt, Assistant Clerk, Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of the demurrer; of the judgment of the Court;

F. C. K.

of the plaintiff's application for and the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this Twelfth day of December, A. D., 1922. [Seal of the Court of Claims.] F. C. Kleinschmidt, Assistant Clerk, Court of Claims.

Endorsed on cover: File No. 29,321. Court of Claims. Term No. 771. The Perkins Campbell Company, appellant, vs. The United States. Filed December 29th, 1922. File No. 29,321.

FILED
DEC 31 1923
WM. R. STANSBURY
CLERK

United States Supreme Court.

OCTOBER TERM, 1923—No. 183.

PERKINS CAMPBELL COMPANY,
Plaintiff-Appellant,
—against—
THE UNITED STATES,
Defendant-Respondent.

BRIEF FOR PLAINTIFF-APPELLANT on APPEAL FROM THE COURT OF CLAIMS.

HENRY T. HUNT,
Attorney for Plaintiff-Appellant.

ARLEN G. SWIGER,
Of Counsel.

Court Press, N. Y. C.

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United States Supreme Court.

PERKINS CAMPBELL COMPANY,
Plaintiff-Appellant,

—against—

THE UNITED STATES,
Defendant-Respondent.

BRIEF FOR PLAINTIFF-APPELLANT on APPEAL FROM THE COURT OF CLAIMS.

Statement of the Case.

This is an appeal from an order of the Court of Claims sustaining a demurrer to the petition.

The Court of Claims rendered no opinion.

The petition prayed reformation of a settlement contract on the ground of mutual mistake, and also for determination by the Court of Claims of the amount due the claimant under the original contract, when the settlement contract has been reformed to accord with the intention of the parties.

This settlement contract or award purports to settle the rights and obligations of the parties, the claimant and the United States, under a contract for the delivery by the claimant of 35,000 sets of ambulance harness. This settlement award incorporates the obligation settled

by reference only. This incorporation by reference occasioned the mistake. Neither party was aware that the settlement contract settled the obligation for 35,000 sets but believed that it settled as they intended the obligation with reference only to 20,000 sets.

After partial performance by the claimant of its obligation to deliver 35,000 of ambulance harness and after costs had been incurred with relation to all these sets, the United States requested the claimant to make an offer looking to the reduction of the contract from 35,000 to 20,000 sets.

The claimant accordingly offered to reduce the contract as requested on condition that the United States execute a new contract with it for 10,000 sets of cart harness.

This offer of reduction was *in process* of acceptance at the time of the armistice, but by reason of that event the process of acceptance was arrested when incomplete and the new contract was never actually executed.

Negotiations then took place between the duly authorized agency of the United States (the Claims Board, Office of Director of Purchase) and the claimant looking to the settlement of the ambulance harness contract. This board and the claimant agreed in writing that the settlement should be upon the basis of 35,000 sets.

A subordinate agency of the said Claims Board, the Jeffersonville, Ind., Zone Board, acting out of its authority and misunderstanding the procedure set up, instructed the claimant to limit its claim under the ambulance harness contract to 20,000 and to make claim for its costs with regard to the remaining 15,000 to another agency of the

War Department, to-wit: the Board of Contract Adjustment.

The claimant obeyed this instruction, limiting its claim in the Zone Board proceeding to costs incurred in 20,000 sets only and was ultimately paid in this proceeding its costs with regard to said 20,000 sets. The claimant also, pursuant to the Zone Board's instructions, made claim to the Board of Contract Adjustment for costs incurred with regard to the remaining 15,000 sets.

While this claim was pending before the Board of Contract Adjustment an agreement was arrived at in the Zone Board proceedings with regard to the 20,000 sets and a settlement contract drawn up by which it was intended to settle only the subject matter of that proceeding, to-wit: 20,000 sets. The claimant's proof of claim in the Zone Board proceeding had been strictly limited to costs incurred with reference to these 20,000 sets. This settlement contract or award *incorporated by reference the contract for the 35,000 sets as the obligation settled by the award.* Neither of the parties noticed this and both intended by the award to settle only 20,000 sets leaving the other 15,000 sets for determination by the Board of Contract Adjustment.

When the Board of Contract Adjustment came to render its decision with regard to the 15,000 sets it refused relief.

The claimant was paid under the settlement contract sought to be reformed only its costs incurred with regard to the 20,000 sets and was paid no part of the costs incurred with regard to the other 15,000. The claimant's costs with regard to the 15,000, for which it has not been compensated, aggregate $21,868.89.

The petition prays for the reformation of the settlement contract to the contract the parties intended and that the Court of Claims then determine the amount due to the claimant with regard to the cost incurred for the 15,000 sets for which it has not been compensated.

Specification of Error.

On October 30th, 1922, the Court of Claims entered the following order:

"ORDER

This case was submitted upon the defendant's demurrer to the plaintiff's petition. On consideration thereof it is

ORDERED, by the Court that the said demurrer be and the same hereby is sustained and the petition dismissed by the Court.

October 30th, 1922."

It is specified for error that this order is erroneous; that the demurrer should have been overruled and the defendant required to answer.

Brief of Argument.

The order of October 30th, 1922, is alleged to be erroneous.

As the Court of Claims filed no opinion the claimant assumes that the Court based its order upon some one of the objections urged by the Assistant Attorney General. These objections follow:

1st. The Court of Claims has not jurisdiction to decree the relief prayed for.

2nd. The allegations of mistake as to the award are insufficient to support an action for reformation.

3rd. The petition shows accord and satisfaction for the cause of action asserted, to-wit:

(a) The petition shows that the claimant has surrendered such cause of action by accepting another contract as compensation for the work done on the 15,000 sets of ambulance harness, for which work the claimant now seeks to recover.

(b) The settlement contract or award sought to be reformed has been fully performed by the parties. The acceptance of the money fixed by said settlement contract as compensation to the claimant includes compensation for the work done on the 15,000 sets of harness.

It is submitted that none of these objections are well taken.

I. The Court of Claims has jurisdiction to decree the relief prayed for.

(a) *Under the Dent Act.*

The prayer of the petition is as follows:

"WHEREFORE, the claimant prays that this Court issue its decree finding that the award of December 19th, 1919, awarding the claimant $80,373.20 in settlement of its rights under claim P. C. 2623, Contract No. 2788, under Form C Certificate, Claims Board, Office of Director of

Purchase, No. P. C. 2623, dated May 29th, 1918, did not in a material respect express the intention of the parties, the intention of the parties being that the said award should constitute a settlement of that part only of P. C. 2623 (Contract No. 2788) as determined on May 29th, 1918, by the Claims Board, Office of Director of Purchase, to the extent of 20,000 sets of ambulance harness whereas, it purported on its face to adjust and discharge the agreement as found to exist by the Claims Board on said date, including the full 35,000 sets of ambulance harness. Claimant further prays that this Court proceed on the basis of the agreement established by said Claims Board to receive such proof of claim as the said Zone Board should have received and to determine the amount due to the claimant and to find it is entitled to receive, in addition to the amount it has already received, the sum of $21,868.89, itemized as appears on the attached Exhibit A, but reduced by the remuneration set forth in Paragraph 45, if the Court should determine such reduction proper.

The claimant further prays for all other further relief to which it is entitled in law or equity."

The jurisdiction of the Court of Claims to reform this award and to adjudicate the rights of the claimant after the award is reformed, to accord with the intention of the parties, rests upon Section 2 of the Act of March 2nd, 1919 (Dent Act), and upon Section 145 of the Judicial Code.

Section 1 of the Dent Act provides in part:

> "The Secretary of War * * * is hereby authorized to pay, adjust or discharge any agreement upon a fair and equitable basis, that has been entered into in good faith during the present emergency and prior to November 12th, 1918, by any officer * * * acting under his authority * * * with any * * * corporation for the manufacture * * * of equipment connected with the prosecution of the war when such agreement has been performed in whole or in part, or obligations have been incurred upon the faith of the same by any corporation prior to November 12th, 1918, and such agreement has not been executed in the manner prescribed by law."

The relevant portion of Section 2 of the Dent Act follows:

> "The Court of Claims is hereby given jurisdiction on petition of * * * any corporation referred to in Section 1 to find and award fair and just compensation in the cases specified in such section, in the event * * * the Secretary of War shall fail or refuse to offer a satisfactory adjustment, payment or compensation as provided for in said section."

The case at bar is a case specified in Section 1. The Court of Claims is therefore given jurisdiction by Section 2 to find and award fair and just compensation, the Secretary of War having failed and refused to offer satisfactory compensation.

The allegations of the petition showing this case to be within Section 1 are Paragraphs "1" to "18," inclusive.

The allegations of the petition showing that the Secretary of War has failed and refused to offer a satisfactory adjustment are set out in Paragraphs "48" and "49."

(b) *Under Section 145 of the Judicial Code.*

The claimant maintains also that the Court of Claims has jurisdiction to decree the relief prayed for by force of Section 145 of the Judicial Code. By said section the Court of Claims is given jurisdiction to hear and determine "all claims except for pensions founded upon * * * any contracts, express or implied, with the Government of the United States in respect to which claim the party would be entitled to redress against the United States in a court of law, equity or admiralty if the United States were suable."

The jurisdiction of the Court of Claims to act under this section is alleged in Paragraph "1" of the petition and by the petition as a whole.

(c) *The Court of Claims has jurisdiction to reform contracts for mutual mistake.*

Hearne v. *Marine Insurance Company*, 20 Wallace, 488-490;

Moffett, etc. Co. v. *Rochester*, 178 U. S. 373-384;

Harvey v. *United States*, 105 U. S. 679;

Ackerland v. *United States*, 240 U. S. 531;

Cramp & Son v. *United States*, 239 U. S. 231;

U. S. v. *Milliken,* 202 U. S. 168;
District of Columbia v. *Barnes,* 197 U. S. 146-150;
South Boston Iron Works v. *United States,* 44 Ct. Cl. 174-200;
Toledo, etc. Railway v. *United States,* 55 Ct. Cl. 40;
Aetna Construction Co. case, 46 Ct. Cl. 113.

II. The allegations of mistake are sufficient to support an action for reformation.

The petition did not employ the word "mistake" with regard to the error of the parties in executing the settlement contract sought to be reformed.

However, it is alleged (Petition, paragraph 43) that the said award did not express the intention of the parties in that it purported to adjust and discharge the agreement for the delivery of 35,000 sets, whereas it was the intention that it should adjust and discharge only 20,000 sets out of the said 35,000. It is prayed that said award be reformed to express the intention of the parties.

Paragraph 42 of the petition also states "it was not the intention of the claimant nor the officers with whom the settlement covered by the award was negotiated to settle thereunder any claim of the claimant beyond 20,000 sets."

To allege an intention of both parties and to also allege a departure from the intention is tantamount to an allegation of mistake.

The rule of pleading is:

> "If by fair and reasonable intendment the facts alleged or inferences to be drawn therefrom show a mutual mistake it is sufficient."
>
> *Cyc.* Vol. 34, page 974, note 48;
> *Maher* v. *Hibernia Ins. Co.*, 67 N. Y. 283;
> *Arlt* v. *Whitlock*, 65 App. Div. (N. Y.) 248;
> *Store Company* v. *Trust Company*, 48 N. Y. Supp. 1083;
> *Koch* v. *Streeter*, 218 Ill. 546.

If the Court of Claims sustained a demurrer by reason of any insufficiency of allegations of mistake the claimant ought to be permitted to amend its petition.

III. The petition does not show accord and satisfaction for the cause of action asserted.

The cause of action asserted is compensation for costs incurred in manufacturing 15,000 sets of ambulance harness under a contract with the United States, suspended at the request of the United States. This contract was numbered 2788 (Petition, Exhibit B, paragraphs "8" to "11," inclusive).

In order that the Court may be made acquainted with the action of the parties alleged in the petition and be in a position to determine the legal effect of these actions it is deemed desirable to set them out chronologically.

Actions of the Parties from August 10th, 1917 to November 15th, 1919.

On August 10th, 1917, claimant and the United States executed contract No. 2788 for the delivery of 35,000 sets of ambulance harness (Petition, paragraph 8).

On August 10th, 1918, the claimant had delivered approximately 3,000 sets of said harness, the United States having requested that the performance of this contract be deferred. There remained for delivery at that time 13,875 sets of lead harness and 16,328 sets of wheel harness (Petition, paragraph 10).

On August 22nd, 1918, the claimant was informed that the need for ambulance harness was less than had been anticipated and the claimant was requested to make an offer for the revision of this contract so as to reduce the number to 20,000 sets. An understanding was arrived at between the officers of the United States negotiating with the claimant and the claimant which understanding was embodied in the following memorandum:

> "In accordance with our understanding in cancelling ambulance harness, of which we have 32,000 sets yet to manufacture, we will agree to allow 15,000 sets of these harness without expense to the Government with the understanding that we are to be allotted 10,000 dump cart harness, Quartermaster Corps, at $45 per set" (Petition, paragraph 11).

On October 23rd, 1918, the claimant received the following letter:

"War Department,

Office Quartermaster General of the Army. No. 4551. Washington, October 22, 1918.

From: Clothing & Equipage Division, Leather Subdivision, Unit G, Potomac Park.

To: Perkins Campbell Company, Cincinnati, O.

Subject: Cancellation of Contract.

1. This to inform you that 15,000 s.s. four-mule ambulance or wagon harness as per specification j-124, 7,500 s.s. each lead and wheel, have been cancelled from P. O. 2788 dated August 10, 1917, which was issued to you for 35,000 s.s. of above harness.

2. In lieu of this cancellation, award has been made you for 10,000 s.s. cart harness at $45 per set on contract L-357-J. This contract is now in process of preparation and will go forward to you for signature within several days.

By authority of the Acting Quartermaster General.

AZEL F. COCHRAN,
Captain, Quartermaster Corps, U. S. A.,
In Charge of Contracting Section"

(Petition, paragraph 13).

On October 23rd, 1918, the Perkins Campbell Company received the following telegram:

"Washington, D. C.

334, p. 23.

PERKINS CAMPBELL COMPANY,

Cincinnati, Ohio:

Telegram referring to 10,000 dump cart harness received. Cancellation and award of 10,000 sets approved. Contract now before Review Board but has not been approved by them. Use your own judgment in cutting harness. Will notify you when contract is approved.

WOOD HARNESS COCHRAN"

(Petition, paragraph 14).

The Court will observe that neither the letter nor the telegram constituted an acceptance of the claimant's offer set out in petition, Paragraph 11. The letter and telegram attempted to accept the offer of cancellation without performing the obligation upon which it was conditional, to-wit: the execution of the cart harness contract (Petition, paragraphs "15" to "22," inclusive).

On November 7th, 1918, the Director of Purchase requested the claimant to purchase bits for the performance of the prospective contract for cart harness (Petition, paragraph 23).

On November 9th, 1918, the claimant notified the Director of Purchase that it would purchase the said bits if the delivery date of the prospective cart harness contract was extended (Petition, paragraph 24).

On November 15th, 1918, the United States requested claimant to suspend production under the

ambulance harness contract and under the prospective cart harness contract. It suspended production as requested (Petition, paragraph 25).

On February 25th, 1919, the Comptroller of the Treasury ruled that proxy signed contracts did not bind the United States. Accordingly Congress enacted the Dent Act on March 2nd, 1919 (Petition, paragraph 26).

Neither the ambulance harness contract nor the prospective cart harness contract had been executed as required by Section 3744 (Petition, paragraph 27).

On March 19, 1919, the Secretary of War constituted the War Department Claims Board as the agency through which the operations of the Secretary of War under the Dent Act should be exercised (Petition, paragraph 28).

On March 26th, 1919, the War Department Claims Board promulgated Supply Circular No. 17 which set forth the procedure for claims under the Dent Act (Petition, paragraph 29).

This circular, Paragraph 2, provided that claims based on agreements reduced to contract form or otherwise established by written evidence should be present in the form of Statement of Claim, form A (Petition, paragraph 30).

Pursuant to this circular the claims of this claimant under contract 2788 and under proposed contract L-357-J (cart harness contract) were forwarded on Statement of Claim, form A to the Claims Board, Director of Purchase, War Department. Pursuant to said circular its claim under No. 2788 was numbered P. C. 2623 and that under L-357-J, P. C. 1357 (Petition, paragraph 31).

By Paragraph 3 Supply Circular 17, the Claims Board, Director of Purchase was directed to inquire into the claim presented and determine the nature, terms and conditions of the alleged agreement upon which the claim was based. If the said Claims Board found that an agreement within Section 1 of the Dent Act had been entered into, it was required to make a certificate in the form attached to Supply Circular 17, entitled Form C and numbered to correspond with the Statement of Claim. It was also required to attach to this certificate a copy of the agreement found to exist. If the agreement had been amended it was required to attach a copy of such amendment (Petition, paragraph 32).

By Sub-section C, Paragraph 3 of Supply Circular 17, the Claims Board was required to submit to the claimant its findings as to the agreement (Petition, paragraph 33).

On May 29th, 1919, the Claims Board, Office of Director of Purchase, executed Certificate C with regard to P. C. 2623 (contract No. 2788). It annexed a copy of the said contract to the certificate. The claimant accepted and approved the said certificate with the contract annexed as the basis of further proceedings. The contract annexed to Certificate C was the contract requiring the claimant to deliver 35,000 sets. The Claims Board did not find that this agreement had been amended (Petition, paragraph 34).

By Paragraph D of Section 3, Supply Circular 17, the Claims Board, Office of Director of Purchase, was directed to proceed on the basis of the agreement established by it and accepted by the claimant to make detailed examination of the

claim and to recommend an equitable basis for its adjustment, payment and discharge. Accordingly the Claims Board directed the Zone Board at Jeffersonville, Indiana, to make this detailed examination and report to the Claims Board (Petition, paragraph 36).

The Zone Board at Jeffersonville disregarded the instructions of the Claims Board and instead of proceeding on the basis of the findings of the Claims Board, proceeded on a different basis. The Zone Board, misunderstanding its duty and the effect of the correspondence with regard to the reduction of the contract, limited the claimant's proof to 20,000 sets (Petition, paragraph 37).

The claimant, relying upon the instructions of the Zone Board, revised its proof so as to make claim only for its costs incurred with reference to 20,000 sets Petition, paragraph 39).

The Zone Board instructed the claimant that it might accept an award without waiving its claim for expenditures incurred with regard to the other 15,000 sets (Petition, paragraph 40).

Thereafter the Zone Board, upon the proof as to the 20,000 sets only, found the claimant entitled to certain sums and recommended payment of such sums to the Claims Board, Division of Purchase and to the War Department Claims Board (Petition, paragraph 41).

Accordingly on December 18th, 1919, a settlement contract or award was drawn providing for the payment of the amount recommended by the Zone Board for costs incurred with regard to 20,000 sets (Petition, paragraph 42).

This is the settlement contract sought to be reformed. It was executed under a mutual mistake.

A copy of this award is set out in Exhibit C. If the Court will examine this award it will observe that the obligations settled by the award is incorporated by reference only. The language used follows:

> "The nature, terms and conditions of said agreement (the agreement settled) are set out in Form C, certificate of Claims Board, Office of Director of Purchase, No. P. C. 2623, dated May 29th, 1919, on file in the War Department."

This certificate is the certificate referred to in petition, Paragraph 34, and has attached to it the contract for 35,000 sets ambulance harness. This settlement contract is dated December 18th, 1919.

On June 30th, 1919, the claimant had filed claim with the Board of Contract Adjustment for its expenses incurred in the manufacture of the 15,000 sets, not the subject matter of the Zone Board proceedings.

On December 18th, 1919, the claimant accepted an award in settlement of P. C. 1357 (the cart harness order, L-357-J). This award included no allowance for any expenditures except in the performance of said cart harness order. This award did include remuneration pursuant to Section C, Supply Circular No. 17 not exceeding ten per cent. of cost of articles in process. This remuneration the claimant offers to return if the settlement contract sought to be reformed is reformed as prayed (Petition, paragraph 45).

On March 20th, 1920, the Board of Contract Adjustment rendered its decision on the claimant's claim for the 15,000 sets. This Board refused relief (Petition, paragraph 46).

On August 19th, 1920, the Secretary of War, on appeal, affirmed the decision of the Board of Contract Adjustment (Petition, paragraph 48).

Claimant's Offer to Cancel 15,000 Sets Without Expense to the United States Never Accepted.

About August 22nd, 1918, the claimant offered to amend contract No. 2788 by reducing it from 35,000 to 20,000 sets (Petition, paragraph 11). The claimant offered to so reduce this contract without making any claim for costs incurred on 15,000 sets *if the United States executed a new contract with it* for 10,000 sets of cart harness at $45 a set.

It was the claimant's intention to propose that if it was compensated for the costs it had already incurred on the 15,000 sets ambulance harness by the price to be paid by the United States for the cart harness it would ask no further compensation (Petition, paragraphs 8, 12, 18).

At the time of the armistice, November 12th, 1918, this offer was in process of acceptance, but the process was never completed (Petition, paragraphs 13-27, inclusive).

Acceptance of the claimant's offer required the execution of the proposed new contract by the United States. The approval of the Board of Review of the Quartermaster General's office of the new contract was necessary before it could become a contract of the United States (Petition, paragraph 14).

The armistice impelled this Board to refuse its approval. The new contract was never executed, hence the offer of the claimant was never accepted.

The new contract contemplated by the claimant and by the officers of the Quartermaster's Department was a legally binding contract and not a mere proposal or recommendation of such a contract or a mere order, breach of which would not entitle the parties to damages.

The offer was, as stated, to surrender the right to deliver 15,000 out of the 35,000 sets and to make no claim for costs incurred on the 15,000 provided the new contract was entered into. The contract section of the Quartermaster General's office, which had authority to reduce contracts and authority to recommend new contracts, did proceed so far as they could to accept the offer of the claimant. Their efforts fell short. Their award of L-357-J (cart harness contract) was no more than a recommendation to the Board of Review. The Board of Review never approved the new order and it never developed into a contract. Thus the rights and obligations of the parties under contract No. 2788 were not altered up to November 15th, 1918.

On November 15th, 1918, the claimant was asked to suspend proceedings on the entire 35,000 ambulance harness contract (Petition, paragraph 35).

The Actions of the Parties After November 15th.

Between May 29th, 1919, and June 30th, 1919, and about June 29th, 1919, the claimant arranged with the officers of the United States, the Zone Board, to divide its claim under contract No. 2788 into two parts. Pursuant to this arrangement it proceeded as to 20,000 sets before the Zone Board and as to 15,000 sets before the Board of Contract Adjustment.

On December 18th, 1919, it accepted compensation in the Claims Board proceedings for the work done on the 20,000 sets.

The claimant had every intention of continuing to prosecute its claim as to the 15,000 sets before the Board of Contract Adjustment where said claim was pending. It is ridiculous to suppose that the claimant, in view of the pendency of its proceeding before the Contract Adjustment Board, intended to surrender its rights in that proceeding when it accepted the award in the Zone Board proceedings. It executed the settlement for the 20,000 sets in the belief that it covered 20,000 sets only. Its proof had covered only 20,000 sets and it was clearly understood by both parties that the settlement award provided compensation for only 20,000 sets.

It is submitted, therefore, that the objections submitted by the learned Assistant Attorney General are not well taken.

CONCLUSION.

Unless the settlement contract entered into under mistake is reformed all avenues for relief are blocked. If the settlement contract is reformed, the claimant may proceed in the Court of Claims under the Dent Act, praying the Court to award fair and just compensation for the costs incurred in relation to the 15,000 sets. It may also proceed under Section 145, to hear and determine the claim founded upon contract No. 2788 (that part of it not covered by the settlement for 20,000 sets).

It is respectfully urged, therefore, that the order of the Court of Claims sustaining the demurrer be reversed.

Respectfully submitted,

HENRY T. HUNT,
Attorney for Plaintiff-Appellant.

ARLEN G. SWIGER,
Of Counsel.